

AMENDED IN ASSEMBLY MARCH 22, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1351

Introduced by Assembly Member Logue

February 18, 2011

An act to amend ~~Section 50113.1~~ *Sections 50113.1 and 50117* of the Revenue and Taxation Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as amended, Logue. Underground storage tanks: fees: deficiency determinations.

Existing law requires the owner or operator of an underground petroleum storage tank, or other responsible party, to pay a specified maintenance fee for each gallon of petroleum placed in an underground storage tank that he or she owns, and to take corrective action, as defined, in response to an unauthorized release of petroleum from the tank. Existing law, the Underground Storage Tank Maintenance Fee Law, requires that the State Board of Equalization administer and collect those underground storage tank fees and prescribes procedures for the administration and collection of those fees. Existing law authorizes the board, if it is dissatisfied with a specified report file or the amount of fee paid to the board under those provisions, or if no report has been filed or no payment or payments of fees have been made to the state by any fee payer, to compute and determine the amount of fees to be paid, based on any information available to it. In the case of the failure to make a related report or return, existing law requires every notice of determination of an amount due to be given within 8 years after the date that the report or return was due.

This bill would require, if the board finds that the person who ~~currently~~ owns an underground storage tank failed to make a report or return because he or she was a qualified absentee owner of an underground storage tank, the notice of determination to be mailed within 3 years after the date the amount was required to have been paid or the report was due. The bill would require, if the board finds that the person does not ~~currently~~ own the underground storage tank and failed to make a report or return because he or she was a qualified absentee owner of an underground storage tank, the notice of determination to be mailed within 8 years after the amount was required to have been paid or the report or return was due, but would require the notice of determination to include only amounts due that arose during the owner's final 3 years of owning the underground storage tank. The bill would define the term "qualified absentee owner" for purposes of those provisions.

Existing law authorizes the board to decrease or increase the amount of a deficiency determination before it becomes final, but only permits the amount to be increased if a claim for the increase is asserted by the board at or before the determination hearing.

This bill would authorize the board, in the case of a deficiency determination issued for failure to make a report or return, as described, to decrease the amount of that determination if the board makes specified findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 50113.1 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 50113.1. (a) Except in the case of fraud, intent to evade this
- 4 part or the rules and regulations adopted pursuant to this part, or
- 5 failure to make a report or return, every notice of a determination
- 6 of an additional amount due shall be given within three years after
- 7 the date when the amount was required to have been paid or the
- 8 report or return was due, or within three years after the report or
- 9 return was filed, whichever period expires later.
- 10 (b) Except as provided in subdivision (c), in the case of failure
- 11 to make a report or return, the notice of determination shall be
- 12 mailed within eight years after the date the report or return was
- 13 due.

(c) Notwithstanding subdivision (b), either of the following shall apply:

(1) If the board finds that the person owns the underground storage tank and failed to make a report or return because he or she was a qualified absentee owner of the underground storage tank, the notice of determination shall be mailed within three years after the date the amount was required to have been paid or the report or return was due.

(2) If the board finds that the person does not own the underground storage tank and failed to make a report or return because he or she was a qualified absentee owner of the underground storage tank at the time the report or return was due, the notice of determination shall be mailed within eight years after the date the amount was required to have been paid or the report or return was due, but the notice of determination shall only include amounts due that arose during the owner's final three years of underground storage tank ownership.

(3) For purposes of this section, "qualified absentee owner" means the owner of an underground storage tank at the time the report or return was due who meets all of the following criteria:

(A) The owner was not the operator, as defined by Section 25299.20 of the Health and Safety Code, of the underground storage tank system.

(B) The owner had no ownership interest in the person who was the operator of the underground storage tank system.

(C) The owner establishes that he or she did not know of, and could not have reasonably known of, the requirement to register with the board as an owner of an underground storage tank.

(D) (i) The board did not have contact with the owner of the underground storage tank regarding the requirement that the owner register with the board prior to the relevant time period described in paragraph (1) or (2).

(ii) If the board did have contact with the owner of the underground storage tank prior to the relevant time period described in paragraph (1) or (2), the owner is liable for the fee for the period beginning on the date of that contact to the date the notice of determination was mailed.

~~(d) (1) If the notice of determination was mailed pursuant to subdivision (b), paragraphs (1) and (2) of subdivision (c) shall~~

1 only apply to that notice of determination if it was issued on or
2 after January 1, 2012.

3 ~~(2) If the notice of determination was not mailed pursuant to~~
4 ~~subdivision (b), paragraphs (1) and (2) of subdivision (c) shall~~
5 ~~only apply if either of the following occurs on or after January 1,~~
6 ~~2012:~~

7 *(d) Paragraphs (1) and (2) of subdivision (c) shall apply if either*
8 *of the following occur:*

9 *(1) A notice of determination is issued pursuant to subdivision*
10 *(b) on or after January 1, 2012.*

11 *(2) Prior to the issuance of a notice of determination, either of*
12 *the following occurs on or after January 1, 2012:*

13 *(A) First contact is made between the board and the owner.*

14 *(B) The board mails returns to the owner for the periods during*
15 *which, up to eight years, the owner owned the underground storage*
16 *tank.*

17 *SEC. 2. Section 50117 of the Revenue and Taxation Code is*
18 *amended to read:*

19 *50117. (a) The board may decrease or increase the amount of*
20 *the determination before it becomes final, but the amount may be*
21 *increased only if a claim for the increase is asserted by the board*
22 *at or before the hearing.*

23 *(b) (1) In the case of a deficiency determination issued for*
24 *failure to make a report or return pursuant to subdivision (b) of*
25 *Section 50113.1, the board may decrease the amount of that*
26 *determination as described in subdivisions (c) and (d) of Section*
27 *50113.1, if the board finds that an owner's failure to make a report*
28 *or return is due to the owner being a qualified absentee owner of*
29 *an underground storage tank, as defined in paragraph (3) of*
30 *subdivision (c) of Section 50113.1.*

31 *(2) The board may decrease the amount of the determination*
32 *only for notices of determination issued on or after January 1,*
33 *2012.*